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Before the

In Time Warner's comments regarding lease access time, Warner poses strong opposition to favored classes of programmers such as Low Power television stations. Warner asserts that categorization of lease access programmers into favored classes is "inconsistent with the Congressional admonition that cable operators should not exercise editorial discretion on leased access channels"[1]. In the Cable Act, cable operators are permitted to consider content to the extent necessary to determine a reasonable rate.[2]. This shows favored classes of programmers are permissible, indeed cable operators are encouraged to set different rates for each different lease channel user.

Commercial LPTV stations need favored access rates because such stations solely derive their income from advertising sources. Unlike other types of programmers, LPTV stations would not charge the cable subscriber a monthly fee. The cable industry acknowledges that it is difficult to pay lease access rates solely with local advertising revenue. In the Senate Hearings for S-12, the foundation of the Cable TV Consumer Protection Act of 1992, cable industry representatives Messrs. Money and Robbins said

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[1] Warner at 31-32

[2] 47 U.S.C. 532(c)(2).

"Such economics would be very uncertain and do not guarantee that (a) an independent producer can generate enough local advertising revenue to cover the costs of paying for a network (programming costs) without seperate subscriber fees; (b) have enough money left over to pay the operator for carriage on the leased access channel; and (c) still earn a profit". [3] Further in the Report, the Comittee concluded that "the cable operator is almost certain to have interests that clash with that of the programmer seeking to use lease access channels. If their interests are similar the operator would have been more than willing to carry the programmer on the regular cable channels. The operator thus has already decided for any number of reasons not to carry the programmer. For example, the operator may beleive that the programmer might compete with programming that the operator owns or controls." [4] This amost certainly applies to LPTV stations because such stations requesting lease access would not already be carried on the system, generally because the operator views the LPTV station as competition.

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[3] Report of the Senate Committee on Commerce, Science, and Transportation Together with Minority Views on S-12, page 30.

[4] Report of the Senate Committee on Commerce, Science, and Transportation Together with Minority Views on S-12, Page 31

Congress did not put LPTV at a disfavored position in must carry as Warner asserts. In fact, Congress encouraged cable operators to carry LPTV stations. Further, in the original S-12 bill, the Senate granted must carry to all LPTV stations. [5]

It is our firm belief that it is essential that the Commission preserve and maintain the Low Power Television Service created by Congress. Warner does not consider that Low Power television stations are federally licensed facilities whose intent is to serve the interest, convenience and necessity of the public. LPTV should be given priority rates over purely commercial programmers who are not licensed by the Commission as a public trustee.

Almost all of the opposing Petitioners consistently assert that advancing any other scheme of pricing for lease access channels would be inconsistent with the 1984 Cable Act that cable operators be allowed to "establish the price, terms, and conditions for the use of lease

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[5] Report of the Senate Committee on Commerce, Science, and Transportation Together with Minority Views on S-12, page 108

access channels so as not to adversely affect the operation, financial condition, or market development of the cable system".[6] In 1984, Congress intended to further the market development of the cable industry which at that time was a promising young industry that needed protection to promote growth. Congress deregulated cable to allow it to grow. And grow it has. Unfettered, cable has grown into mammoth proportions. Indeed, the reason for the cable legislation in 1992 was that the once protected cable industry has now become a monopoly requiring regulation. It is no longer necessary to protect the market development of the cable industry for it now has vertically integrated throughout the communications industry. The cable industry should no longer rely on the Commission to unduly protect it, for it is no longer the fledgling that existed in 1984.

In the Joint Opposition Companies filing, the petitioners state that there is no evidence that rates derived by the implicit channel charge method are unaffordable which will lead to a lack of diversity.[7] As calculated by the implicit channel charge method for lease access, the rates are unaffordable

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[6] 47 U.S.C. 532(c)(1)

[7] Joint Opposition Companies at page 3

for programmers such as LPTV stations who derive their income solely from local advertising. This does not mean that such programmers should be barred economically from using lease channel access, rather, the Commission should promote diversity by adopting a pricing structure that allows such programmers to utilize lease access channels. Engle Broadcasting can demonstrate that the implicit channel charge results in a rate that is unaffordable. First, the Commission must realize that the cable operators will charge the highest allowable rate possible to a LPTV station because the cable operator has not been willing to carry the station. It has been our experience that cable operators will set rates that are unaffordable to bar stations from using the lease channels. Under the Rules the cable operators are permitted to use the channels designated for commercial use until a request is made by a commercial user. [8] There is very little use of commercial lease access channels nationwide, but very few cable operators are sitting on empty channels, they are using these channels for cable programming. Consequently, the cable operators are reluctant to remove a service for a commercial lease access user. The cable operators will charge the maximum amount for lease channel access allowable by the Commission.

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[8] U.S.C. 47 532(b)(4)

Prior to the 1992 Cable Act, Engle Broadcasting requested of area cable operators to lease a channel under the rules for commercial use. The rates set by the cable operators were in the millions of dollars per year, regardless of the size of the system, the economic condition of the area, or the market value of the channel. The general manager of one of these systems admitted that the rates were set so high so that no station or programmer would be able to afford to pay (and the system would not have to lease the channel). We can safely conclude that the maximum rate set by the Commission will become the de facto rate.

Under the implicit channel charge formula, the rate for a LPTV station to lease a basic channel on Cable System A which has 100,000 subscribers, has 20 channels on its basic tier (containing television stations) and charges $9.95 for that tier would be calculated as follows:

(Divide the cost for basic tier by the number of channels in that tier, multiply the result by the highest implicit fee paid, multiply by the percentage of subscribers receiving the tier to determine the rate)

($9.95 divided by 20) - $0.00 x 1.00 = $0.4975

(multiply the rate by the number of subscribers to determine the monthly payment)

$0.4975 x 100,000 = $49,750.00 per month

(multiply the monthly payment by 12 to determine the annual payment)

$49,750.00 x 12 = **$597,000.00 per year**

The LPTV station, to be competitive with prevailing marketplace conditions, would have to sell its advertising time at a rate similar to advertising sold by the cable system. An average of local advertising time available for sale in the cable and LPTV industry is 4 minutes per hour.

This computes the total available local advertising time for sale in one year by the LPTV station.

(Multiply 4 minutes per hour by 24 hours per day by 365 days per year to get the available minutes per year. Multiply the available minutes per year by the cable systems rate for 1 minute of advertising.)

4 minutes per hour	x	24 hours per day	=	96 minutes/day
96 minutes per day	x	365 days per year	=	35,040 min./year
35,040 min/year	x	$19.80 per minute[9]	=	$693,792.00

$693,792.00 is the amount of advertising revenue a LPTV station would derive if all time availabilities were sold throughout the entire year. (This however is unrealistic, no television station or cable operator sells 100% of

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[9] Cable System A charges $19.80 per minute as its highest rate for advertising.

its advertising availabilities throughout the entire year. For the purposes of this demonstration, however, we will calculate on a 100% sell-out)

Compare the potential income to the cost to lease a channel:

Lease Channel Rate Per Year	\$597,000.00
Potential Advertising Revenue Per Year	\$693,792.00

The cost of the lease channel is 86% of the income! When you add the expenses of running the station, personel, programming, production, and other fixed expenses, it is easy to see that a station could not operate in the black let alone earn a fair profit.

The cable operator deserves to earn a profit on its lease channels and so does the leasee.

We propose the following as a formula to calculate a fair rate for lease access users other than LPTV stations. In addition, to ensure a fair minimum amount to the cable operator, we propose a baseline rate. The lease access rate would be computed by multiplying the amount the cable subscriber pays for the basic tier by the percentage of audience share for similar channels in the same program category. [10] Once on the system, the rate would be adjusted annually based on audience share for that channel on the system. The obligation of audience measuring would be that of the leasee. The leasee would be required to use a reputable measuring firm independent of both parties. The baseline minimum rate should be calculated on viewing ratings of the lowest viewed cable service carried on that cable system.

The rate we propose for LPTV stations is very much similar to the above method. Because the Commission has separate rules for LPTV that prohibit LPTV stations from negotiating with cable operators on the same terms as other video programmers, LPTV stations must be treated differently in lease access rate calculation. The FCC requires that LPTV stations be placed on the basic tier, if carried by a cable system. [11] Additionally, the FCC declared "LPTV stations are, in fact, television

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[10] Or if the video programmer has measured audience levels, those figures would be used.

[11] MM Docket 92-266, para 157

broadcast stations".[12] Therefore a LPTV station by law cannot negotiate for a lower cost tier channel. It is my firm belief that it is the obligation of the Commission to carry out the Congressional mandate to preserve all of the television broadcast service. Although the Congress did not mandate that all LPTV stations enjoy must carry status, it has made it well known that it favors the continuance and growth of the entire television broadcast service including LPTV. In the Conference Report of the 1992 Cable Consumer Protection Act Congress concluded "**Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems** where the low power station creates and broadcasts, as a substantial part of its programming day, local programming." [13] We believe that with this clear mandate in mind, the Commission has a duty to make special conditions for LPTV stations that do not qualify for must carry, to lease channels on cable systems. Since LPTV stations are a diversified voice with a clear mandate to serve the interests of the public, they should be able to access the subscribers of cable systems

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[12] MM Docket 92-259 para 140

[13] Page 58, Para 21

within their service area at a priority rate. In many cases LPTV stations are similar to the local origination channel on a cable system, offering programs of local interest, local sports, and public affairs. The addition of a LPTV station to a cable system would enhance and fill gaps in local programming

Paul Kagan Associates, Inc., the channel viewing share for local access channels is 0.1%.[14] This is also the same viewing level received by C-SPAN I and C-SPAN II. We ask that you adopt this viewing percentage level in calculating the rate for LPTV stations that produce local programming. The following is a calculation to lease a basic channel on the same cable system we discussed earlier:

Cable System A which has 100,000 subscribers, has 20 channels on its basic tier (containing television stations) and charges $9.95 for that tier

($9.95 x 0.1% = $0.01

multiply the rate by the number of subscribers

$0.01 x 100,000 = $1,000.00 per month

or $12,000.00 per year

As you can see, the new rate offers a significant amount of money for the cable operator yet does not adversely affect the operation, financial condition, or market development of the LPTV station. We believe that this preferential rate is warranted for LPTV stations to ensure the continuance of this portion of the television broadcast service.

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[14] SEE EXHIBIT #1

The cable industry has advanced the notion that lease channel access users should not be on a first come first serrved basis. to be consistent with our belief that LPTV stations should have priority use of lease access channels, we believe that a LPTV station should be given preferential treatment over other users.

It is imperitive that our proposal or a similar rate proposal for lease access for LPTV be adopted by the Commission. Without this fair rate proposal many LPTV stations will cease to operate. It would be a great loss to our nation's smaller communities.

Respectfully Submitted,

Paul V. Engle

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July 30, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 31st date of July, 1993, I caused copies of the foregoing Reply To Comments Submitted In Opposition To Petitions For Reconsideration On July 21, 1993 On Lease Channel Access Rates were sent by postage-paid, first class U.S. mail to the following:

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ENGLE BROADCASTING
REPLY TO COMMENTS SUBMITTED IN OPPOSITION
TO PETITIONS FOR RECONSIDERATION ON JULY 21, 1993
ON
LEASE CHANNEL ACCESS RATES

EXHIBIT #1

CHANNEL VALUATION MODEL

Service	(1) 24-Hr. Rating	(2) Channel Viewing Share	(3) Market Weighting Factor	(4) Weighted Viewing Share	(5) Basic Revenue Contrib.	(6) Local Revenue	(7) Total Revenue	(8) License Fee	(9) Net Revenue/ (Cost)
NBC	6.30	17.0%	1	17.0%	$ 2.60	$ .00	$ 2.60	$ .00	$ 2.60
ABC	5.90	15.9	1	15.9	2.43	.00	2.43	.00	2.43
CBS	5.10	13.7	1	13.7	2.10	.00	2.10	.00	2.10
Indie 1/Fox	2.75	7.4	1	7.4	1.13	.00	1.13	.00	1.13
ESPN	.80	2.2	3	6.5	.99	.32	1.31	.32	.99
Indie 2	1.70	4.6	1	4.6	.70	.00	.70	.00	.70
TBS	1.60	4.3	1	4.3	.66	.00	.66	.10	.56
Superstation	.75	2.0	2	4.0	.62	.00	.62	.10	.52
Indie 3	1.20	3.2	1	3.2	.49	.00	.49	.00	.49
Discovery	.45	1.2	3	3.6	.56	.00	.56	.07	.49
USA	1.05	2.8	1	2.8	.43	.26	.69	.23	.46
TNT	.75	2.0	2	4.0	.62	.02	.64	.20	.44
BET	.30	.8	4	3.2	.49	.00	.49	.06	.43
Public	.90	2.4	1	2.4	.37	.00	.37	.00	.37
Lifetime	.50	1.3	2	2.7	.41	.03	.44	.12	.32
Family	.80	2.2	1	2.2	.33	.05	.38	.08	.30
Headline	.60	1.6	1	1.6	.25	.00	.25	.00	.25
Nick	1.05	2.8	1	2.8	.43	.01	.44	.22	.22
Prevue Guide	.15	.4	4	1.6	.25	.00	.25	.03	.22
CNN	.70	1.9	1	1.9	.29	.20	.49	.32	.17
C-SPAN I	.10	.3	5	1.3	.21	.00	.21	.04	.17
Spanish	.20	.5	2	1.1	.16	.00	.16	.00	.16
MTV	.60	1.6	1	1.6	.25	.13	.38	.22	.16
Learning	.10	.3	5	1.3	.21	.00	.21	.05	.16
Weather	.30	.8	2	1.6	.25	.00	.25	.09	.15
A&E	.30	.8	2	1.6	.25	.01	.26	.11	.15
Shopping 1	.10	.3	1	.3	.04	.10	.14	.00	.14
FNN	.25	.7	2	1.3	.21	.00	.21	.07	.14
Local Orig.	.05	.1	5	.7	.10	.00	.10	.00	.10
Local Access	.05	.1	5	.7	.10	.00	.10	.00	.10
VH-1	.25	.7	1	.7	.10	.00	.10	.00	.10
Shopping 2	.05	.1	1	.1	.02	.06	.08	.00	.08
Movietime	.15	.4	2	.8	.12	.00	.12	.05	.07
C-SPAN II	.05	.1	5	.7	.10	.00	.10	.04	.06
Religious	.05	.1	3	.4	.06	.00	.06	.00	.06
Travel	.05	.1	1	.1	.02	.00	.02	.00	.02
TNN	.50	1.3	1	1.3	.21	.01	.22	.20	.02
Comedy	.15	.4	1	.4	.06	.00	.06	.07	(.01)
CNBC	.15	.4	1	.4	.06	.00	.06	.08	(.02)
Regl. Sports	.35	.9	3	2.8	.43	.02	.45	.55	(.10)
Totals	37.15	100.0%	---	124.9%	$19.13	$1.22	$20.35	$3.42	$16.93

Column Notes: (1) Examples only. Nielsen avg. 24-hr. ratings for first six months of 1989 used where available; all others are PKA estimates. (2) Calculated by dividing 24-hr. rating by total rating (37.15). (3) Examples only; arbitrary factor used to give extra weight in the channel valuation equation to special-purpose, low-rated, high-perception and demographically targeted services; normal weight is a 1. (4) Weighted viewing share = Col. 2 X Col. 3; may add to more than 100%. (5) Calculated by multiplying Col. 4 by $15.32, the PKA estimate for the 1989 natl. avg. monthly basic rate. (6) In this example, we assumed ESPN would produce 30% of $1.06/sub/mo. in local ad sales, USA 23%, CNN 19%, MTV 12% and FAM 5%, with Lifetime, TNT, A&E, Nick, TNN and regional sports sharing the remaining 11%. The 5% commission from the first shopping channel is assumed to generate $1.20/sub/yr., the second 75 cents. (7) Col. 5 + Col. 6. (8) License fees are 1990 top of rate card, without volume discounts; multichannel discounts were applied, e.g., Headline News free when carried with CNN, VH-1 free with MTV. Surcharges for ESPN NFL and TBS Goodwill Games not included. (9) Col. 8 - Col. 7. *Estimates of Paul Kagan Associates, Inc.*